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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 372

STATE LODGE OF MICHIGAN, FRATERNAL ORDER ORDER OF POLICE, by its President, Henry Mida, Lodge No. 115 of the State Lodge, HOWARD HEINE and BERNARD L. DUGGAN,
Plaintiffs, Appellants and Petitioners,

vs.

CITY OF DETROIT, a Municipal Corporation, EDWARD J. JEFFRIES, Mayor of the City of Detroit, JOHN H. WITHERSPOON, Commissioner of Police of the City of Detroit, County of Wayne and State of Michigan, LOUIS L. BERG, Superintendent of Police of the City of Detroit, County of Wayne and State of Michigan,
Defendants, Appellees and Respondents

PETITION FOR WRIT OF CERTIORARI

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I.

STATEMENT OF FACTS

To the HonorableSupreme Court of the United States:

Petitioners respectfully show unto the court as follows:

I. Statement of Matter Involved

1. Petitioner, State Lodge of Michigan, Fraternal Order of Police, is a Michigan non-profit corporation; Victory Lodge No. 115, Fraternal Order of Police, is a Local Chapter of Fraternal Order of Police, the membership of which is composed of members of the Police Force of the city of Detroit. Howard Heine and Bernard Duggan are individuals who were police officers of the City of Detroit when this controversy arose. All are citizens of the United States.

2. Defendants below, the city of Detroit, is a Michigan Municipal Corporation, Edward J. Jeffries is its Mayor, and John H. Witherspoon, is Commissioner of Police, and Louis Berg, Superintendent of Police.

3. At the time the controversy involved arose, the Fraternal Order of Police had a national history of 28 years (Vol. I, Exhibits, page 109, Exhibit 46). It consisted of 200 chapters operating in 17 states, and in many large cities including Philadelphia, Cleveland, Cincinnati, Pittsburgh, Wheeling and other cities.

In Michigan, there were 24 chapters, including the largest cities of Grand Rapids, Bay City, Saginaw and Lansing. There were chapters literally surrounding the Detroit area, in Hamtramck, Wyandotte, Lincoln Park, Van Dyke, Royal Oak, Centerline, Birmingham, Pleasant Ridge, Huntington Woods and Wayne County Sheriff's office.

4. In those localities where there are chapters of Fraternal Order, it comprises as to membership a percentage of the local law enforcement bodies of approximately 100% and includes Federal, State and local officers. Police Officials are high in their praise of the organization, and state that it builds morale and makes for better police work (R. 124-226). In Michigan eminent men are honorary

members of local chapters, and J. Edgar Hoover, head of the F.B.I. has approved it (R. 426). The head of the Michigan State Police is a member, and a member of an important committee (R. 96).

5. The aims and purposes of the Fraternal Order of Police are explained in the charter of the National Chapter as follows (R. 15):

> "(a) This organization is formed for the purpose of promoting personal and efficient cooperation between the police officers in the cities of these various states to the end that the public may be better served in the consideration of law and law enforcement.
>
> (b) Advancing social, charitable and educational undertakings among police.
>
> (c) To more effectively combat crime by unity and concerted action in all matters pertaining to law enforcement.
>
> (d) To promote the advancement of crime prevention and detection.
>
> (e) The Fraternal Order of Police denounces disloyalty and our oath of obligation binds us to our allegiance to these United States.
>
> (f) The Fraternal Order of Police stands for justice to humanity and for its rights, safety and developments. We believe in the equality of all before the law.
>
> (g) We advocate the rigid enactment and enforcement of civil service laws for the police of the various states and nation.
>
> (h) The Fraternal Order of Police advocates and will work for the establishment of pension funds for the various cities of these states and nation.
>
> (i) The Fraternal Order of Police is an organization of Police sworn to enforce the laws impar-

tially under all circumstances and has no other affiliations."

6. Some 24 years prior to this controversy, on June 5, 1919, the then Police Commission, of Detroit, James Inches, addressed a communication "To all members of the department" in a general order, numbered 21-B, in which he denounced Fraternal Order, claimed the organizer was a rum-runner, and said (R. 59):

> "In view of these facts, all patrolmen are hereby forbidden to join this organization or to remain members of it, unless they want to be regarded as disloyal to the true interests of the Department."

7. There was no other order in the Detroit Police Department specifically forbidding membership in Fraternal Order of Police until after the controversy arose. Commissioner Watkins in March of 1932, thirteen years after Inches' Order of prohibition, said in an order (247):

> "The limitations on the membership of Department rule to joining organizations are contained in the oath and in Section 124 of the Detroit Police Manual."

Seventeen years later, May 26, 1936, the then Commissioner of Police, still about six years prior to the occurrences involved in this controversy, promulgated Order 347 (62-63). In this order the Commissioner in a communication to all members of the Department called attention to Section 124 of the General Rules of the Police Manual, as follows (R. 62):

> "A member of the Department is prohibited from affiliating with any organization or body, the provisions of the Constitution of which would in any way exact prior consideration and prevent him from performing police duty."

He also called attention to the police oath (R. 62):

> "I, ... do solemnly swear that I will support the constitution of the United States, the Constitution of the State of Michigan, obey the Rules and Regulations of the Detroit Police Department, and faithfully perform the duties of a policeman.
>
> "And I will not be or become a member of any organization prohibited by the rules of the Detroit Police Department, or any organization whatever which is affiliated with any organization which holds or claims or exercises the right to demand obedience of men or to direct me to disobey any of the rules of the Detroit Police Department—So help me God."

He then ordered as follows (63):

> "Any member belonging to organizations in conflict with the above shall immediately sever all connections."

8. On January 26, 1943, petitioner Heine, had been called to Police Headquarters to the office of the Superintendent concerning a routine matter, and while there the Superintendent inquired as to ticket sales to policemen for places at a banquet to be held, of which sales, the Superintendent had become aware. Heine explained that it was to be a social gathering. The Superintendent made it clear there could be no unions or organizations other than those already allowed by the Commissioner, and gave permission to hold the dinner (Exhibit Vol II, pages 46-51).

9. The dinner was held in a hotel on Thursday January 28, 1943. Early in the evening about a dozen men presented themselves, wholly unexpected and all unknown to Heine, two from Dearborn, and six from Hamtramck, and

the rest Detroit Police Officers. They stated that they had been invited by members of the Detroit Police Department, and were made welcome by those present. One of the Dearborn men, Mida, explained Fraternal Order of Police, and invited those present to join. Heine explained that permission would have to be obtained from the Police Officials. A temporary organization was formed, with Heine as President, and Duggan as Secretary, to go to the Superintendent to ask for permission to enter into the organization. No discussion about the organization had been had prior to the dinner (Exh. Vol. II, pages 51-73).

10. A Newspaper Reporter was present at this meeting upon invitation, and the Commissioner of Police had himself been invited, and also one of the members of the Common Council. The latter two did not attend, but the reporter was present (Ex. Vol. II, p. 15-16 & 50).

11. The first thing the Commissioner of Police heard about organizing a chapter in Detroit was when he read a newspaper report the next day (R. 379-80). Petitioner Heine was then called to the Superintendent's office on January 30, 1943 (R. 380) where he was interrogated by the Commissioner and the Superintendent (Exh. 139, Exh. Vol. II, p. 46-80). In response to questions, Heine related the occurrences at the meeting as above set forth and denied that there was as yet any organization of the Fraternal Order, but that there was a temporary organization for the purpose of getting permission to organize, of which he was president. He denied any knowledge of the 24 year old order barring membership, but read it at the time. He himself had joined the Police Department in 1923, 4 years after the order had been made. He stated he did not believe his continuance as President of the temporary organization violated the order because there

would be no chapter organized until permission was granted.

12. Duggan was similarly interrogated on February 1, 1943 (Ex. 130, Exh. Vol. II, pp. 11-46). He admitted being a member of Fraternal Order of Police at that time, having joined the Saturday preceding. He stated that Heine had first approached him about the dinner, and he believed that it was a good idea, because he believed something should be done towards getting some kind of representation of the rank and file of police officers. He explained his own personal financial and other situations, and his inability to get anything done about it, as an example. He had had no knowledge before hand that this particular organization was to be discussed however. His explanation of the occurrences at the dinner were similar to Heine's. He refused to disclose matters he deemed secret about the organization. He said Exhibit Vol II, pages 26-27:

> "Q. Therefore you deliberately violated what you understood was a departmental order?
>
> "A. No, I am going to qualify my answer, because I can't answer that way. We still have the right under the Constitution to the right of assembly. When I compromise myself in the department —or anyone else, we still have the right to assembly. Now it is the understanding of a great number of men that the order does prohibit men from assemblage."

Duggan never knew of the old order of Commissioner Inches until he read it in a newspaper in the article concerning the meeting. He had been a member of the Police Department eight years. He had not previously known that the Department had any contact of any kind with Fraternal Order of Police.

13. Charges were filed against both Heine and Duggan, and notwithstanding the Detroit City Charter provides that they may not be dismissed except for good cause shown, upon trial by a Police Board, they were found guilty of insubordination, and discharged (R. 35).

14. On February 3, 1943, petitioners started their Chancery action in Wayne Circuit Court, the amended and supplemental bill (R. 29-42) charging as follows (R. 33-38):

> "8. Plaintiffs allege that the said order and all acts of defendant Witherspoon and all of the other defendants in pursuance thereof are unlawful and unreasonable, and are discriminatory as applied to these plaintiffs, and exceed and are in violation of any powers or authority possessed by any of the defendants by virtue of any provision of the charter of the city of Detroit or any other source, and are therefore void and of no effect.
>
> 9. That notwithstanding the said defendants have unlawfully confederated and conspired together, among themselves, and with divers other persons to these plaintiffs unknown, to enforce said orders and to prevent and forbid any police officer of the city of Detroit from becoming a member in the Fraternal Order of Police, and to prevent and forbid plaintiff State Lodge of Michigan Fraternal Order of Police, and Lodge 115, aforesaid and plaintiff Henry Mida, from aiding and assisting them to become members and from promoting and bringing about their membership therein, and to discharge, or take action for the purpose of discharging any police officer of the city of Detroit who does any of those things.
>
> 10. And in the furtherance of the aforesaid unlawful conspiracy and confederation, and also individually and separately said defendants have embarked upon a campaign designed for its further-

ance and to attain its objects and have done and performed certain acts in furtherance thereof, both in pursuance of such unlawful conspiracy and confederation and individually and separately, as follows:

(a) They have threatened to bring charges against any police officer of the city of Detroit who may become a member of Fraternal Order of Police, for the purpose of bringing about disciplinary action against him, threatening to dismiss and discharge him from his service as said police officer and have caused it to be known among police officers of the city of Detroit that they would do so.

(b) They have brought false charges of conduct unbecoming an officer and other false charges against certain police officers of the city of Detroit, and have procured their discharge and dismissal from their services as such police officers, particularly plaintiffs Heine and Duggan, on account of the activities of said police officers in behalf of Fraternal Order of Police.

(c) They have falsely attributed to and charged the Fraternal Order of Police with certain customs, practices and acts, claimed to be inimical to and in violation of the duties of its members as police officers; and more particularly they have falsely charged that the Order gives cards to certain individuals called courtesy cards, by reason of the possession of which the holder receives certain immunities from enforcement of certain laws by members of the Order; that associate and honorary memberships are offered and given by said order to certain individuals for a like purpose and for the purpose of securing untoward influence in behalf of said order and with a like result; that the Order or its members collect sums of money from certain persons, using as a lever to the effect that purpose the fact that they are police

officers; and these plaintiffs allege that all of said charges are false and untrue and have no foundation in fact and are unreasonable and unwarranted, and contrary to the rights of plaintiffs as hereinafter further set forth.

(d) They have sought to intimidate police officers of the city of Detroit and have intimidated them in this respect by publishing their aforesaid threats and falsifications and by causing certain officers to be brought to police headquarters for questioning and grilling by their superior offices to be brought to police headquarters for questioning and grilling by their superior officers, and by communicating their false charges and threats to other departments of the city government, more particularly the Common Council for the city of Detroit, and in the public press and radio, all of which acts are unreasonable and unwarranted and against the rights of plaintiff as hereinafter further set forth.

(e) They have brought or caused to be brought before the Police Trial Board a body provided for and created by Chapter 21 of the City of Detroit, authorized and empowered thereby to hear and determine charges against police officers of the city of Detroit, false charges against certain police officers, based upon their activities in behalf of Fraternal Order of Police, and have supported said false charges by evidence unfounded in fact and unsupported in law, and thus brought about a purported discharge and dismissal from their services as police officers, particularly plaintiffs Duggan and Heine; all of which is in violation of the rights of tenure granted to said police officers by the provisions of Chapter 21 of the said Charter of the City of Detroit, and deprived them of their means of livelihood, and will no longer allow them to pursue their duties

as police officers, nor receive their compensation for the same, to all of which said purportedly discharged persons are still entitled notwithstanding such false and invalid discharges.

(f) And the said defendants have further, under threats of the same penalties, forbidden and prevented police officers from becoming members of said Fraternal Order of Police, or from applying for membership therein, from paying dues or initiation fees, from meeting together in groups of assemblies to discuss or make plans for the same, or from discussing the same as individuals with others who are members, or with non-members.

(g) The said defendants have done and performed all of the foregoing acts in opposition to police officers of the city of Detroit joining or being initiated in, instructed in or active in Fraternal Order of Police, during which time they have tolerated and even encouraged other organizations and groups among said police officers and among other employees of the city government concerning which said organizations there is no valid or reasonable distinction as compared with Fraternal Order of Police, and no reasonable basis for such discrimination in this respect, all of which is unreasonable and unwarranted and contrary to the rights of these plaintiffs as hereinafter more fully set forth.

11. That these plaintiffs charge that all of the aforesaid acts of defendants, both in pursuance of the said alleged conspiracy and confederation, and individually and separately, are contrary to the rights of these plaintiffs in that they violate their rights to peaceably assemble as guaranteed by the 1st and 14th Amendments to the Constitution of the United States, and by Article 2, Section 2, of the Constitution of the State of Michigan, deny to plaintiffs and to abridge their privileges and immunities

as citizens of the United States, contrary to the said 14th Amendment to the Constitution of the United States, and deny them the equal protection of the laws guaranteed by the 14th Amendment to the Constitution of the United States, and abridge and restrain the right of free speech guaranteed these plaintiffs by the 1st and 14th Amendments to the Constitution of the United States and by Article II, Sec. 4, of the Constitution of the State of Michigan."

15. The bill prayed that the order of Commissioner Inches be declared void, that the order discharging Duggan and Heine be declared void, and for injunctive relief.

16. Trial was had in Wayne Circuit Court and on June 11, 1945 a decree was there entered dismissing the bill (R. 531-2).

17. An appeal was taken by the plaintiffs to the Supreme Court of the State of Michigan, based upon Reasons and Grounds of Appeal as follows (R. 535-536):

"(1) The findings of the court are against the great weight of the evidence.

(2) The decree is against the great weight of the evidence.

(3) The court erred in finding that the cause is controlled by a previous decision of the Supreme Court of the State of Michigan.

(4) The court erred in finding that membership and activity in Fraternal Order of Police, Victory Lodge, is inimical to police duties.

(5) The court erred in deciding the matter as a question of law rather than a question of fact.

(6) The court erred in finding that there was cause for discharge of plaintiffs Duggan and Heine by Police Trial Board.

(7) There was no evidence upon which the discharge of plaintiffs Duggan and Heine by Police Trial could be properly based.

(8) The decree is contrary to law.

(9) The court erred in holding that Police Officers may not become members in Fraternal Order of Police.

(10) The court erred in holding that plaintiffs' constitutional rights under the due process clauses of the State and Federal Constitutions had not been violated.

(11) The court erred in holding that the constitutional rights of plaintiffs to freedom of assembly under the state and federal constitutions had not been violated.

(12) The court erred in holding that the constitutional rights of plaintiffs to freedom of speech under state and federal constitutions had not been violated.

(13) The court erred in holding that constitutional rights of plaintiffs to equal protection of the laws had not been violated.

(14) The court erred in finding that there was any order or ruling of Detroit Police Department prohibiting membership in Fraternal Order of Police, Victory Lodge 115.

(15) The court erred in finding that the order barring membership in Fraternal Order of Police, if any, was a reasonable order.

(16) The court erred in finding that the orders of discharge of plaintiffs Heine and Duggan were reasonable orders."

18. The Supreme Court of the State of Michigan, on May 16, 1947, rendered its opinion and entered its Decree affirming the Decree of the lower court (See certified Rec-

ord). This opinion is to be found in *State Lodge of Michigan, Fraternal Order of Police v. City of Detroit,* 318 Mich. 182.

19. Subsequently a motion for rehearing was filed on the following grounds (See Certified Record, Motion for Rehearing):

> "(1) The decision of this court denies to appellants the right to peaceably assemble, which is a right guaranteed to them as a privilege and immunity of citizens of the United States under the 14th Amendment to the Constitution of the United States.
>
> (2) The decision of this court deprives appellants of property without due process of law, contrary to the 14th Amendment to the Constitution of the United States.
>
> (3) The decision of this court denies to appellants the equal protection of the laws, contrary to the 14th Amendment to the Constitution of the United States."

20. This motion for rehearing was denied by the Michigan Supreme Court on June 27, 1947 (See Certified Record, Order denying motion for rehearing).

II.

STATEMENT OF JURISDICTION

21. Petitioners claim that this court has jurisdiction to issue its Writ of Certiorari to the Supreme Court of the State of Michigan, to review its affirmance on May 16, 1947, of the Decree of the Trial Court, under the provisions of the Act of Congress of February 13, 1925, Chapter 229, 43 Sta. 936, as amended, Section 237(b) thereof, which provides as follows:

Sec. 237(b). "It shall be competent for the Supreme Court, by certiorari to require that there be certified to it for review and determination, with the same power and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States, or where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where *any title, right, privilege or immunity* is specially set up or claimed by either party under the Constitution or any treaty or statute of, or commission held or authority exercised under the United States, and the power to review under this paragraph may be exercised as well where the Federal Claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph."

III.

QUESTIONS PRESENTED

22. The questions presented by this Petition for Writ of Certiorari are as follows:

Does not the Departmental Order of James Inches, then Commissioner of Police of the City of Detroit, issued June 5, 1919, the present enforcement of it by the defendants, and the discharge of petitioners Heine and Duggan for acts contrary thereto,

(a) Violate petitioners' right of assembly as guaranteed by Article II, Sec. 2 of the Constitution of the State of Michigan, and the 14th Amendment to the Constitution of the United States?

(b) Deprive petitioners of property without due process of law, contrary to the 14th amendment to the Constitution of the United States?

(c) Deny to petitioners the equal protection of the laws as guaranteed by the 14th amendment to the Constitution of the United States?

IV.

REASONS RELIED ON FOR ISSUANCE OF THE WRIT OF CERTIORARI

23. Petitioners rely upon the following reasons as to why this court should issue its Writ of Certiorari:

(a) The Supreme Court of the State of Michigan has decided a Federal question not heretofore decided by this court. We find no decision of this court which determines the question of whether or not a police officer may join and be active in a Fraternal Order, merely because his Superiors say he may not under penalty of losing his position, when under the Charter provisions governing the Police Department he may only be discharged for good cause shown.

(b) We think the question is one of general interest and importance which probably affects the existence of 200 presently existing chapters of Fraternal Order of Police, and upon its determination depends the question of the expansion of this Fraternal Order, with all the demonstrated benefits to police work.

Wherefore, these petitioners pray that a Writ of Certiorari issue out of this Court directed to the Supreme

Court of the State of Michigan, to review the decision of that court of May 16, 1947 affirming the Decree of the Trial Court.

State Lodge of Michigan Fraternal Order of Police

By Henry Mida,
Its President,

Lodge No. 115 of the State Lodge,
By Howard Heine,
Its President,

Bernard Dugan

Howard Heine

EDWARD N. BARNARD,
Attorney for Petitioners,
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Detroit 26, Michigan.

State of Michigan,
County of Wayne—ss.

On this 20th day of September 1947, before me, a Notary Public in and for said county, personally appeared Henry Mida, Howard Heine and Bernard Duggan, petitioners named in the foregoing petition, who made oath and said that they have read the foregoing petition by them subscribed, and know the contents thereof, and that the same is true, except as to matters therein stated to be upon information and belief, and as to those matters they believe it to be true, and that they have authority to sign in their respective capacities.

Agnes Secor,
Notary Public, Wayne County, Michigan.
My commission expires January 9, 1950.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

PRELIMINARY STATEMENT

This brief is filed in support of a petition for a Writ of Certiorari to the Michigan Supreme Court, to review its affirmance of a decree of the trial court, dismissing the petitioners' bill of complaint in a chancery action. The

petitioners are the State Chapter, and the Local Detroit Chapter of Fraternal Order of Police, a fraternal organization composed entirely of law enforcement officers, and two individuals who were formerly members of the Detroit Police Department. Respondents are administrative police officials. The two police officers were discharged from the police department for activities in the Fraternal Order of Police. It is the claim herein, on behalf of the petitioners, that they are deprived of constitutional rights, particularly the right of peaceable assembly as guaranteed by the 14th amendment.

II.

STATEMENT OF FACTS

The petition sets up the following facts:

Petitioners, Duggan and Heine, were two police officers of the city of Detroit. They, particularly Heine, late in January 1943, conceived the idea of a social dinner among police officers, and commenced the sale of tickets for such dinner among the officers of the Department. On the 26th day of that month, Heine was in the office of respondent, Superintendent Berg, on a routine matter, and there Berg inquired of him concerning the nature of this dinner, which Heine explained. Berg stated that there must be no organization in the police department except those permitted by the administrative officials, and gave permission for the dinner (Exh. Vol II, pp. 46-51).

No particular organization was in anybody's mind, so Duggan at least stated. When Heine proposed the dinner to him he though it was a good thing, because he believed that the rank and file ought to have some adequate representation in the Department. He cited his own very bad financial condition, and his inability to get anything done

about it through any of the organizations that were already existing in the Department. He had been unable to get representation through these organizations (Exh. Vol. II, Exhibit 30, page 13-15).

The dinner was held at a hotel on January 28, 1943, about 100 policemen attending (See Exh. Vol II, p. 71). No discussion about any particular organization had been had prior thereto. Early in the evening however, about ten persons presented themselves to those assembled at the dinner, these persons being unknown to both Heine and Duggan, and stated that they had been invited to attend by members of the Department, and they were made welcome. One of them, Henry Mida, was President of the State Lodge of Fraternal Order of Police, and a Dearborn Police Officer. Mida explained the Fraternal Order and suggested that the Detroit officers join. Heine explained that permission would have to be obtained from their superiors. A temporary organization however was there set up, with Heine as President and Duggan as Secretary, for the purpose of obtaining permission to organize a chapter of the Fraternal Order of Police in Detroit, (Exhibit Vol. II, Ex. 139, pp. 50-53, and Exh. 130, pp. 15-18).

The Commissioner and Superintendent of Police, two of the respondents here, had been invited to attend this dinner, as was also one of the members of the city Council and a newspaper reporter. None but the reporter attended (Exh. Vol II, pp. 15-16, 55-72).

The history and description of Fraternal Order of Police comprise testimony in the record covering over 100 pages, and the examination of some twenty witnesses, many executive police officers of different cities (R. 124-226). At the time the controversy arose, the Fraternal Order had a national history of 28 years (Vol. I, Exhibits,

page 109 Exhibit 46). It consisted of 200 chapters, operating in 17 states, and in many large cities including Philadelphia, Cleveland, Cincinnati, Pittsburgh, Wheeling and other cities.

In Michigan, there were 24 chapters, including the largest cities of Grand Rapids, Bay City, Saginaw, and Lansing. There were chapters literally surrounding the Detroit area, in Hamtramck, Wyandotte, Lincoln Park, Van Dyke, Royal Oak, Centerline, Birmingham, Pleasant Ridge, Huntington Woods and Wayne County Sheriff's office.

In those localities where there are chapters of Fraternal Order, it comprises as to membership approximately 100 per cent of the local law enforcement bodies and includes federal state and local officers. Police officials are high in their praise of the organization, and state that it builds morale and makes for better police work (R. 124-226). It engages in charitable projects, provides social and recreational facilities for its members, organizes plans to combat juvenile delinquencies, conducts educational programs in police work, and engages in liberty bond drives. In Michigan eminent men are honorary members and J. Edgar Hoover, head of the F.B.I., has indicated approval of it (R. 426). The head of the Michigant State Police is a member and a member of an important committee (R. 96). The State Treasurer and a member of the Supreme bench are honorary members (R. 426).

The aims and purposes of the Fraternal Order of Police are explained in charter provisions of the National Chapter as follows (R. 15):

> "(a) This organization is formed for the purpose of promoting personal and efficient cooperation between the police officers in the cities of these various states to the end that the public may be

better served in the consideration of law and law enforcement.

(b) Advancing social, charitable and educational undertakings among police.

(c) To more effectively combat crime by unity and concerted action in all matters pertaining to law enforcement.

(d) To promote the advancement of crime prevention and detection.

(e) The Fraternal Order of Police denounces disloyalty and our oath of obligation binds us to our allegiance to these United States.

(f) The Fraternal Order of Police stands for justice to humanity and for its rights, safety and developments. We believe in the equality of all before the law.

(g) We advocate the rigid enactment and enforcement of civil service laws for the police of the various states and nation.

(h) The Fraternal Order of Police advocates and will work for the establishment of pension funds for the various cities of these states and nation.

(i) The Fraternal Order of Police is an organization of Police sworn to enforce the laws impartially under all circumstances and has no other affiliations."

Some 24 years prior to this controversy, on June 5, 1919, the then Police Commissioner of Detroit, James Inches, had addressed a communication "To all members of the Department," in a general order, numbered 21-B, in which he denounced Fraternal Order of Police, claiming the organizer was a rum-runner, and said (R. 59):

> "In view of these facts, all patrolmen are hereby forbidden to join this organization or to remain members of it, unless they want to be regarded as disloyal to the true interests of the Department."

There was no other order in the Detroit Police Department specifically forbidding membership in Fraternal Order of Police, until after the controversy arose. Commissioner Watkins in March 1932, thirteen years after Inches' Order of prohibition, said in an order (R. 247):

> "The limitations on the membership of Department Rule to joining organizations are contained in the oath and in Section 124 of the Detroit Police Manual."

Seventeen years afterward, on May 26, 1936, the then Commissioner of Police, still about six years prior to the occurrences involved in this controversy, promulgated Order 347 (R. 62-63). In this order the Commissioner called attention to Sec. 124 of the general rules of the Police Manual, as follows (R. 62):

> "Prior claim on Police Duty. A member of the Department is prohibited from affiliating with any organization or body, the provisions of the Constitution of which would in any way exact prior consideration and prevent him from performing police duty."

He also called attention to the Police Oath (R. 62):

> "I ..... do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of Michigan, obey the Rules and Regulations of the Detroit Police Department, and faithfully perform the duties of a policeman.
>
> "And I will not be or become a member of any organization prohibited by the rules of the Detroit

> Police Department, or any organization whatever which is affiliated with any organization which holds or claims or exercises the right to demand obedience of men or to direct me to disobey any of the rules of the Detroit Police Department — So help me God."

He then ordered as follows (63):

> "Any member belonging to organizations in conflict with the above shall immediately sever all connections."

The first thing the Commissioner of Police had heard anything about organizing a chapter in Detroit was when he read a newspaper report the next day, January 29, 1943, giving an account of the dinner (R. 379-80).

Petitioner Heine was then called to the Superintendent's office on January 30, 1943 (R. 380) where he was interrogated by the Commissioner and the Superintendent (Exh. 139, Exh. Vol II, p. 46-80). In response to questions, Heine related the occurrences at the meeting as above set forth and denied that there was as yet any organization of the Fraternal Order, but that there was a temporary organization for the purpose of getting permission to organize, of which he was President. He denied any knowledge of the 24-year old order barring membership, but it was handed to him and he read it at that time. He himself had joined the Police Department in 1923, 4 years after the order had been made. He stated he did not believe his continuance as President of the temporary organization violated the order because there would be no chapter organized until permission was granted. He stated that he would not become a member if permission were not granted. He attended a second meeting the same day however.

Duggan was similarly interrogated on February 1, 1943, (Exh. 130, Exh. Vol. II, pp. 11-46). He admitted being a member of Fraternal Order of Police, having joined the Saturday preceding his interrogation at this second meeting. His explanation of the occurrences at the dinner were similar to Heine's. He refused to disclose matters he deemed secret about the organization. He said (Exhibit Vol. II, p. 26-27):

> "Q. Therefore you deliberately violated what you understood was a departmental order?
>
> "A. No, I am going to qualify my answer, because I can't answer that way. We still have the right under the Constitution to the right of assembly. When I compromise myself in the Department — or anyone else, we still have the right to assembly. Now it is the understanding of a great number of men that the order does prohibit men from assemblage."

Duggan never knew of the old order of Commissioner Inches until he read it in the newspaper in the Article concerning the meeting. He had been a member of the Police Department eight years. He had not previously known that the Department had any contact of any kind with Fraternal Order of Police, knew practically nothing himself about the organization previously.

Charges were filed against Heine & Duggan (R. 23-29, Defendants' Exhibits A to F inclusive), and they appeared before a police board pursuant thereto. After hearing, they were discharged on February 5th and 6th respectfully, for insubordination, based upon their activities in Fraternal Order of Police (R. 374-377, Exhibits 128, 192 & 130).

The present Commissioner and the other respondents violently opposed organization of a chapter of the Fra-

ternal Order of Police among Detroit Police officers. On February 3, 1943, the Commissioner addressed a communication, "To all members of the department" (R. 63-66. Defendants Exh. C, General Order No. 561), in which he said in reference to the 24-year old order of Commissioner Inches (R. 64).

> "This order has never been rescinded and is in full force and effect at this time."

In this communication he ordered the men not to join or remain members (R. 66).

Later, on February 23, 1943, the Commissioner addressed a communication to the Common Council setting forth the situation in detail from his standpoint, and reciting his objections to the organization (R. 69-76, Defendants' Exh. F). In Order No. 561, and this later communication, it appears that his objections were, as he claimed, that the object of the organization was primarily to raise money, to solicit funds from private persons, that it was a labor union, that its use of automobile emblems and honorary memberships was detrimental to police work.

When the Constitution for Victory Lodge 115, the Detroit Local Lodge, was adopted, it contained the following provisions (R. 82, 83, Exhibit 3):

The preamble recites in part:

> "The Constitution and By-Laws of the National Organizational Organization and also of the State Lodge of Michigan of the Fraternal Order of Police, where not inconsistent with the Constitution and By-laws of Victory City Lodge — 115 are also regarded as governing this Lodge, but where such National and State Constitution are inconsistent with the Constitution and By-laws of this local

lodge, the constitution and by-laws of Victory City Lodge 115 of the Fraternal Order of Police, shall govern and control all of its purposes, objects, organizations and activities."

Article II, Sections 9, 19 and 11 are as follows:

Sec. 9. "The Fraternal Order of Police IS NOT and CANNOT affiliate with any labor organization."

Sec. 10. "This Lodge shall not permit any persons who are not or have not been police officers, to become or remain members of the Lodge. The Lodge shall not permit Associate or Honorary Memberships, Courtesy cards, emblem plates or any other privileges to persons who are not or have not been police officers."

Sec. 11. "No oath administered to any incoming new member or to any officer; and no part or portion of any ritual of the lodge, shall contain anything inconsistent with or inimical to any of the objects expressed in this article of the constitution or in any other portion thereof or of the By-Laws."

On February 3, 1943, petitioners started their Chancery Action in the Wayne Circuit Court, the amended and supplemental bill (R. 29-42) charging as follows (R. 33-38):

"8. Plaintiffs allege that the said order and all acts of defendant Witherspoon and all of the other defendants in pursuance thereof are unlawful and unreasonable, and are discriminatory as applied to these plaintiffs, and exceed and are in violation of any powers or authority possessed by any of the defendants by virtue of any provision of the charter of the city of Detroit or any other source, and are therefore void and of no effect.

9. That notwithstanding the said defendants have unlawfully confederated and conspired to-

gether, among themselves, and with divers other persons to these plaintiffs unknown, to enforce said orders and to prevent and forbid any police officer of the city of Detroit from becoming a member in the Fraternal Order of Police, and to prevent and forbid plaintiff, State Lodge of Michigan, Fraternal Order of Police, and Lodge 115, aforesaid, and plaintiff Henry Mida, from aiding and assisting them to become members and from promoting and bringing about their membership therein, and to discharge or take action for the purpose of discharging any police officer of the city of Detroit who does any of these things.

10. And in the furtherance of the aforesaid unlawful conspiracy and confederation, and also individually and separately said defendants have embarked upon a campaign designed for its furtherance and to attain its objects and have done and performed certain acts in furtherance thereof, both in pursuance of such unlawful conspiracy and confederation and individually and separately, as follows:

(a) They have threatened to bring charges against any police officer of the city of Detroit who may become a member of Fraternal Order of Police, for the purpose of bringing about disciplinary action against him, threatening to dismiss and discharge him from his service as said police officer and have caused it to be known among police officers of the city of Detroit that they would do so.

(b) They have brought false charges of conduct unbecoming an officer and other false charges against certain police officers of the city of Detroit, and have procured their discharge and dismissal from their services as such police officers, particularly plaintiffs Heine and Duggan, on account of the activities of said police officers in behalf of Fraternal Order of Police.

(c) They have falsely attributed to and charged the Fraternal Order of Police with certain customs, practices and acts, claimed to be inimical to and in violation of the duties of its members as police officers; and more particularly they have falsely charged that the Order gives cards to certain individuals called courtesy cards, by reason of the possession of which the holder receives certain immunities from enforcement of certain laws by members of the Order; that associate and honorary memberships are offered and given by said order to certain individuals for a like purpose and for the purpose of securing untoward influence in behalf of said order and with a like result; that the Order or its members collect sums of money from certain persons, using as a lever to the effect that purpose the fact that they are police officers; and these plaintiffs allege that all of said charges are false and untrue and have no foundation in fact and are unreasonable and unwarranted, and contrary to the rights of plaintiffs as hereinafter further set forth.

(d) They have sought to intimidate police officers of the city of Detroit and have intimidated them in this respect by publishing their aforesaid threats and falsifications and by causing certain officers to be brought to police headquarters for questioning and grilling by their superior officers, and by communicating their false charges and threats to other departments of the city government, more particularly the Common Council for the city of Detroit, and in the public press and radio, all of which acts are unreasonable and unwarranted and against the rights of plaintiff as hereinafter further set forth.

(e) They have brought or caused to be brought before the Police Trial Board, a body

provided for and created by Chapter 21 of the City of Detroit, authorized and empowered thereby to hear and determine charges against police officers of the city of Detroit, false charges against certain police officers, based upon their activities in behalf of Fraternal Order of Police, and have supported said false charges by evidence unfounded in fact and unsupported in law, and thus brought about a purported discharge and dismissal from their services as police officers, particularly plaintiffs Duggan and Heine; all of which is in violation of the rights of tenure granted to said police officers by the provisions of Chapter 21 of the said Charter of the City of Detroit, and deprived them of their means of livelihood, and will no longer allow them to pursue their duties as police officers, nor receive their compensation for the same, to all of which said purportedly discharged persons are still entitled nothwithstanding such false and invalid discharges.

(f) And the said defendants have further, under threats of the same penalties, forbidden and prevented police officers from becoming members of said Fraternal Order of Police, or from applying for membership therein, from paying dues or initiation fees, from meeting together in groups of assemblies to discuss or make plans for the same, or from discussing the same as individuals with others who are members, or with non-members.

(g) The said defendants have done and performed all of the foregoing acts in opposition to police officers of the city of Detroit joining or being initiated in, instructed in or active in Fraternal Order of Police, during which time they have tolerated and even encouraged other organizations and groups among said police officers and among other employees of the city government concerning which said organizations there is no valid or reasonable distinction as compared

with Fraternal Order of Police, and no reasonable basis for such discrimination in this respect, all of which is unreasonable and unwarranted and contrary to the rights of these plaintiffs as hereinafter more fully set forth.

11. That these plaintiffs charge that all of the aforesaid acts of defendants, both in pursuance of the said alleged conspiracy and confederation, and individually and separately, are contrary to the rights of these plaintiffs in that they violate their rights to peaceably assemble as guaranteed by the 1st and 14th Amendments to the Constitution of the United States, and by Article 2, Section 2, of the Constitution of the State of Michigan, deny to plaintiffs and to abridge their privileges and immunities as citizens of the United States, contrary to the said 14th Amendment to the Constitution of the United States and deny them the equal protection of the laws guaranteed by the 14th Amendment to the Constitution of the United States and abridge and restrain the right of free speech guaranteed these plaintiffs by the 1st and 14th Amendments to the Constitution of the United States and by Article II, Sec. 4, of the Constitution of the State of Michigan."

The bill prayed that the order of Commissioner Inches be declared void, that the order discharging Duggan and Heine be declared void and that they be reinstated, and for injunctive relief.

Trial was had in Wayne Circuit Court and on June 11, 1945 a decree was there entered dismissing the bill (R. 531-2).

An appeal was taken by the plaintiffs to the Supreme Court of the State of Michigan, based upon the reasons and grounds of appeal as follows (R. 535-536):

"(1) The findings of the court are against the great weight of the evidence.

(2) The decree is against the great weight of the evidence.

(3) The court erred in finding that the cause is controlled by a previous decision of the Supreme Court of the State of Michigan.

(4) The court erred in finding that membership and activity in Fraternal Order of Police, Victory Lodge, is inimical to police duties.

(5) The court erred in deciding the matter as a question of law rather than a question of fact.

(6) The court erred in finding that there was cause for discharge of plaintiffs Duggan and Heine by Police Trial Board.

(7) There was no evidence upon which the discharge of plaintiffs Duggan and Heine by Police Trial could be properly based.

(8) The decree is contrary to law.

(9) The court erred in holding that Police Officers may not become members in Fraternal Order of Police.

(10) The court erred in holding that plaintiffs' consitutional rights under the due process clauses of the State and Federal Constitutions had not been violated.

(11) The court erred in holding that the constitutional rights of plaintiffs to freedom of assembly under the State and Federal Constitutions had not been violated.

(12) The court erred in holding that the constitutional rights of plaintiffs to freedom of speech under state and federal constitutions had not been violated.

(13) The court erred in holding that constitutional rights of plaintiffs to equal protection of the laws had not been violated.

(14) The court erred in finding that there was any order or ruling of Detroit Police Department prohibiting membership in Fraternal Order of Police, Victory Lodge 115.

(15) The court erred in finding that the order barring membership in Fraternal Order of Police, if any, was a reasonable order.

(16) The court erred in finding that the orders of discharge of plaintiffs Heine and Duggan were reasonable orders."

The Supreme Court of the State of Michigan, on May 16, 1947, rendered its opinion and entered its Decree affirming the Decree of the lower court (See certified Record). This opinion is to be found in *State Lodge of Michigan, Fraternal Order of Police v. City of Detroit,* 318 Mich. 182.

Subsequently a motion for rehearing was filed on the following grounds (See certified Record, Motion for Rehearing):

"(1) The decision of this court denies to appellants the right to peaceably assemble, which is a right guaranteed to them as a privilege and immunity of citizens of the United States under the 14th Amendment to the Constitution of the United States.

(2) The decision of this court deprives appellants of property without due process of law, contrary to the 14th Amendment to the Constitution of the United States.

(3) The decision of this court denies to appellants the equal protection of the laws, contrary to the 14th Amendment to the Constitution of the United States."

This motion for rehearing was denied by the Michigan Supreme Court on June 27, 1947 (See Certified Record, Order denying motion for rehearing).

III.

QUESTIONS PRESENTED

The questions presented by the Petition for Writ of Certiorari are as follows: As charged in the bill of complaint in the trial court (R. 37-38, par. 11 of bill) throughout the trial, and in the Supreme Court by reasons and grounds of appeal (R. 535-536) and in a motion for rehearing:

Q. Does not the Departmental Order of James Inches, then Commissioner of Police of the city of Detroit, issued June 5, 1919, the present enforcement by the defendants, and the discharge of petitioners Heine and Duggan for acts contrary thereto,

(a) Violate petitioners' right of assembly as guaranteed by Article II, Section 2 of the Constitution of the State of Michigan, and the Fourteenth Amendment to the Constitution of the United States?

(b) Deprive petitioners of property without due process of law contrary to the fourteenth amendment to the Constitution of the United States?

(c) Deny to petitioners the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States?

Every question arising under the Constitution may, if properly raised in a State Court come ultimately to this court for decision: *Hague v. C.I.O.*, 59 S. Ct. 954, 307 U. S. 496, 83 L. Ed. 1423.

IV.

STATEMENT OF JURISDICTION

21. Petitioners claim that this court has jurisdiction to issue its Writ of Certiorari to the Supreme Court of the State of Michigan, to review its affirmance on May 16, 1947, of the Decree of the Trial Court, under the provisions of the Act of Congress of February 13, 1925, Chapter 229, 43 Stat. 936, as amended, Section 237 (b) thereof, which provides as follows:

> Sec. 237(b) "It shall be competent for the Supreme Court, by certiorari to require that there be certified to it for review and determination, with the same power and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States, or where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where *any title, right, privilege or immunity* is specially set up or claimed by either party under the Constitution or any treaty or statute of, or commission held or authority exercised under the United States, and the power to review under this paragraph may be exercised as well where the Federal Claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph."

Every question arising under the Constitution may, if properly raised in the State Court, come ultimately to this Court for decision: *Hague v. C.I.O.*, 59 S. Ct. 954, 307 U. S. 496, 83 L. Ed. 1423.

V.

REASONS RELIED ON FOR ISSUANCE OF THE WRIT OF CERTIORARI

Petitioners rely upon the following reasons as to why this court should issue its Writ of Certiorari:

(a) The Supreme Court of the State of Michigan has decided a Federal Question not heretofore decided by this court. We find no decision of this court which determine the specific question of whether or not a police officer may join and be active in a Fraternal Order, merely because his superiors say he may not do so under penalty of losing his position, particularly when under the Charter Provisions governing the Police Department he may only be discharged for good cause shown.

(b) We think the question is one of general interest and importance which probably affects the existence of 200 presently existing chapters of Fraternal Order of Police, and upon its determination depends the question of the expansion of this Fraternal Order, with all the demonstrated benefits to police work. Not only are present members affected, but the interests of every law enforcement officer everywhere is involved, as well as the administrative officials, on the question of the existence of the right of peaceful assembly and guarantees under the Fourteenth Amendment.

It was said in *Hague v. C.I.O.*, 59 S. Ct. 954, 207 U. S. 496, 83 L. Ed. 1423:

> "We granted certiorari as the case presents important questions in respect of the asserted priv-

ilege and immunity of citizens of the United States to advocate action pursuant to a federal statute, by distribution of printed matter and oral discussion in peaceable assembly; and the jurisdiction of federal courts of suits to restrain the abridgment of such privilege and immunity."

Hague v. C.I.O., 59 St. Ct. 954, 307 U. S. 496, 83 L. Ed. 1423.

VI.

ARGUMENT

A. THE ORDER AND ACTS COMPLAINED OF DEPRIVED PETITIONERS OF THEIR RIGHT TO PEACEABLY ASSEMBLE, THEIR EQUAL PRIVILEGES AND IMMUNITIES, AND TOOK PROPERTY WITHOUT DUE PROCESS OF LAW, ALL CONTRARY TO THE FOURTEENTH AMENDMENT.

(a) The administrative order complained of was void, and the acts of the defendants pursuant thereto were legally unjustifiable.

1. There was only one single administrative order in the Detroit Police Department which specifically prohibited membership in Fraternal Order of Police. That was the 24-year old order of Commissioner Inches. At the time this controversy arose, this order was so old that the Department as a whole, knew nothing about it. It was issued at least 4 years before Heine was a member of the Police Department, and 15 years before Duggan became a police officer.

Very definitely neither of them knew of this order when they sought to become active in this Fraternal Order of Police. It is undoubtedly true that both knew that there were many organizations which they must not join, and both undoubtedly expected opposition to their activities in this one, and both originally expected to go to their superiors and ask permission. Only the precipitate action of the officials themselves prevented.

But neither one of the individual petitioners knew of any specific orders prohibiting Fraternal Order of Police.

Nor was there any other restraint on joining organizations save in the rules of the Department, and the oath taken by all police officers.

2. Twice after Commissioner Inches' order, successive Commissioners had issued communications relative to the restraints on Police Officers from joining organizations. In neither was there any mention made of the Inches' Order. Both placed the restraints right where they really resided—in the rules of the Department, and the oath which all officers took. On March 30, 1932, the then Commissioner Watkins had said in an order (R. 247):

> "The limitations on the membership of the Department rule to joining organizations are contained in the oath and in Section 124 of the Detroit Police Manual."

Again, on May 26, 1936 the then Commissioner Pickert said in a general communication "To all members of the Department" (R. 62-63):

> "Your attention is called to Section 124 of the General Rules in the Detroit Police Manual, which reads as follows:
>
> 'Prior Claim on Police Duty. A member of the Department is prohibited from affiliating with any organization or body, the provisions of the constitution of which would in any way exact prior consideration and prevent him from performing police duty.'
>
> The oath you took at the time of your appointment reads as follows:
>
> 'I (repeat your name) do solemnly swear that I will support the constitution of the United States, the Constitution of the State of Michigan, obey the rules and regulations of the Detroit Police Department, and faithfully perform the duties of a police-

> man, and that I will not be or become a member of any organization whatever which is affiliated with any organization which holds or claims or exercises the right to demand obedience of me or to direct me to disobey a rule of the Detroit Police Department, so help me God.'
>
> Any member belonging to organizations in conflict with the above shall immediately sever all connections."

Thus the only real restraint on police officers from activity in any organization was against affiliating with any that would in any way "exact prior consideration and prevent him from performing police duties," as provided in Section 24 of the Rules, and "which holds or claims or exercises the right to demand obedience * * * or direct * * * to disobey a rule of the Detroit Police Department * * *," as provided in the oath.

We think there was in force no other restraint, and that neither Heine or Duggan violated these.

At any rate, the ancient order of Commissioner Inches had been forgotten, and definitely was not in force, by the terms of the two subsequent orders of successive police commissioners.

3. However, the present Commissioner, after this controversy arose, on February 3, 1943, in a general communication, Order No. 561, stated that: "This order * * * is in full force and effect at this time," referring to the Inches Order. While this was after Heine and Duggan had become involved with Fraternal Order of Police, their continuance in their relationship with that Fraternal Order may raise the question of the validity of that Departmental order.

At least it is only on this tenuous line that any consideration of that order may enter into this controversy.

4. It is definitely our position that this order is unreasonable, and that it is arbitrary, capricious and fanciful, therefore void, and that its enforcement, by discharging Heine and Duggan, and its repromulgation, deprived petitioners of their constitutional rights as claimed herein.

(b) The Inches order is unreasonable and is therefore void.

1. An administrative order, to be reasonable, must be based upon some reason, or upon some fact. If it is wholly without reason, and utterly contrary to demonstrated facts, it must necessarily be unreasonable, capricious, fanciful and therefore void.

2. Many pages of the record are filled with testimony of high police officials which shows conclusively that Fraternal Order of Police so far from being inimical to police work is of tremendous benefit, that it conducts educational programs in police work, institutes programs to combat juvenile delinquencies, contributes to charity, engages in Liberty Bond Drives, and provides social life and recreation for its members (R. 224-226). J. Edgar Hoover is favorably disposed toward it (R. 26). The head of Michigan State Police belongs to it, and is a member of an important committee (R. 96). There are 200 chapters in 17 states and Detroit is literally surrounded with chapters. Chapters are in all the larger cities of Michigan, and the record conclusively establishes that the police morale is lifted, and that the benefits are great. A justice of the Michigan Supreme Court and the State Treasurer are honorary members.

The Police Commissioner charged that it was a Labor Union, and that its chief function was to raise money, and that it had honorary members and made use of automobile emblems.

These things are nowhere based upon any evidence at all. The Local Chapter, Victory Lodge No. 115, out of deference to Police Officials' objections, provided in their constitution against having honorary members and automobile emblems.

Being based upon no facts at all, and being contrary to established facts, it seems clear that the order and acts complained of are unreasonable, arbitrary, capricious and therefore void.

3. Nor did the Commissioner make any investigation before taking the position which he did, before instituting the action complained of. Had he done so we feel that a different situation would have presented itself.

He knew nothing at all about Fraternal Order of Police except that early in his occupancy of his office the Commissioner had seen in the file Inches' old order, had talked with Police Officers about it, but to what extent we do not know, and had some letters relating to a few minor instances when members in other places had run afoul of the rules of good police conduct.

He knew nothing at all of the growth and extent of Fraternal Order of Police, and never knew of any attempt to organize in Detroit until the next day after the dinner party, when he read the newspaper account.

Upon this complete lack of knowledge of anything except what had occurred 24 years before, he revived the Inches Order, the discharges of Heine and Duggan were caused, and other methods used to frustrate the organization of a Chapter in the Detroit Police Department.

We submit that this was unreasonable, and therefore void.

4. Much is said in this case about the police department being a "Quasi-Military" organization. Of course there is no more reason for calling it a quasi-military than calling it quasi civilian. It is much more civilian than military, for the men do not live in camps, they have regular hours, on and off duty, except in emergencies, they do not rise or go to bed at bugle call, but live in homes with wives and families like other civilians.

But let us suppose that this Police Department is a purely military organization.

Even so, there exists no duty to obey an unlawful order. Consequently, failure to obey such order cannot give rise to a charge of disobedience or insubordination.

There is no military law that is not derived from the constitution. See the extremely well-considered decision in *Ex Parte Milligan,* 4 Wall, (U. S.) 2, 18 L. Ed. 281, and United States Constitution, Article I, Section (a), Article II, Section 1, Amendment 5.

And nothing is better settled than neither officers nor soldiers are bound to obey an illegal order.

It was said in *State v. Sparks,* 27 Tex. 627, 632:

> "There is nothing better settled, as well by the military as the civil law, than that neither officers nor soldiers are bound to obey any illegal order of their superior officers; but, on the contrary, it is their bounden duty to disobey them. The soldier is still a citizen, and as such is always amenable to the civil authority * * * While an officer must not obey an unlawful order of his superior in command, yet, as in all cases where he declines obedience to it he acts at his peril, such indulgence should be shown in extenuation of his obedience to such orders from those he is ordinarily bound to obey."

State v. Sparks, 27 Tex. 627, 632.

In *Riggs v. State,* 3 Coldw. (Tenn.) 85, 9 Am. Dec. 272, 273:

> "It is a well settled principle, a soldier is not bound to obey any unlawful order."
>
> *Riggs v. State,* 3 Coldw. (Tenn.) 85, 9 Am. Dec. 272, 273.

See also:

> *United States v. Carr,* 225 F. Cas. No. 14732; 1 Woods 480;
> *Mitchell v. Harmony,* 3 How. 129;
> *Moscwin v. Fabigan,* 1 Cowp. 180."

5. It seems to us that the higher police officials, like the rank and file, are bound by regular established departmental rules. It would hardly seem that a Departmental order in excess of or in violation of established rules is reasonable or valid. Yet, it is definitely clear that membership in this organization is in no sense prohibited by the rule above quoted or the oath heretofore referred to.

6. The Supreme Court of Michigan in its opinion (*State Lodge v. City of Detroit,* 318 Mich. 182, on pages 188 and 189) implies, in contradiction of the Exhibit itself, that the Local Chapter, Victory Lodge 115, had not prohibited Associate memberships and car emblems in its constitution. Yet the Constitution was before that court. It cannot be questioned. Allusion is made to Duggan's statement when interrogated by his superiors, "that they have what is called Associate Members." This of course does not prove that the provision is not in the Constitution of the Local Lodge, because some other lodges do have Associate Members. And indeed the Constitution may not have been formed at that time, or Duggan may not have known it.

But in any event, it is idle to claim that the Constitutional provision does not exist, when there it is in the Exhibit itself for all to read (R. 82, 83, Ex. 3).

7. On page 185 of its opinion the Supreme Court of Michigan said that the Police Commissioner, "had occasion to investigate the Fraternal Order of Police."

In the next sentence it gives as a detail of the investigation:

> "He examined the file in his office respecting the plaintiff order and discussed the file with Officers in the City of Detroit Police Department and with police officers in other police departments."

This is exactly what we claim. There was no investigation at all. The Commissioner looked at the file giving 24-year old information and talked with a few persons, and instituted his arbitrary action on this meager and antiquated information.

Clearly this is unreasonable.

In summary, we are sure that the action of the defendants in reviving the 24 year old order of Commissioner Inches, and in enforcing it and claiming that Heine and Duggan had violated it, and forcing their discharge on that basis under a claim of insubordination, is unreasonable, arbitrary, capricious and therefore void.

It seems to us equally clear that defendants' acts based upon this void order, deprives petitioners of their constitutional rights.

We shall proceed to a discussion of these points.

(c) Petitioners are deprived of their right to peaceably assemble.

The right to peaceably assemble is not founded in any Constitutional provision, but existed prior thereto, and the first amendment but prohibits Congress from abridgment thereof. *United States v. Cruikshank,* 92 U. S. 552, 23 Law Ed. 588.

The State Constitutions are commonly framed so as to secure this right to their people, and the Michigan Constitution, Article II, Section 2, provides:

> "The People have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the legislature for redress of grievances."

This Michigan Constitutional provision standing alone of course presents no Federal question, but this court has clearly held that the right of peaceable assembly is secured by the 14th Amendment to the United States Constitution. *Douglas v. City of Jeannette,* 63 Sup. Ct. 877; 319 U. S. 157; rehearing denied, 63 S. Ct. 1170; *State v. Barlow,* 153 P. (2) 647, 107 Utah 292, appeal denied, 65 Sup. Ct. 916, 324 U. S. 829, rehearing denied, 65 S. Ct. 1026, 324 U. S. 891, and see decisions hereinafter quoted.

This right to peaceably assemble is secured to "The People." There is no exception made of policemen. The right of course is not without reservation, but it is, we think, self-evident that no restriction can go so far as to prohibit peaceable assembly based upon an unreasonable and void administrative order.

It is not so very long ago that even workmen could not "peaceably assemble"—they could not form labor unions for that was in early times considered a criminal conspiracy. The courts have lifted that odious ban. More recently

again foremen were in the same way prohibited from peaceable assembly, until this court by its decision lifted that ban.

We say definitely that policemen should be finally freed from arbitrary administrative orders that prohibit them from assembling for mutual good—for purposes in no wise inimical to their required devotion to police duties.

We ask no other decision from this court.

It is as simple and self evident as that.

The principle here sought to be invoked has several times been announced by this court and other courts.

In *Thomas v. Collins, 65 Sup. Ct. 315, 323 U. S. 516, 89 Law Ed. 430,* rehearing denied, 65 S. Ct. 557, 323 U. S. 819, 89 Law Ed. 630, the State of Texas had a statute requiring registration of labor organizations before they could solicit membership in a union. Thomas, without registering, made a speech, at an assembly, soliciting memberships. He was convicted and sentenced by a Justice of the Peace. He was also adjudged in contempt of court for violation of an injunction that had been issued. The Texas Appellate Court refused to release him on Habeas Corpus proceedings, and an appeal was taken to this court. There are several concurring opinions in that decision, that of Mr. Justice Rutledge concurred in by a majority of the other Justices, saying as follows:

> "The case confronts us again with the duty our system places on this court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. *Cf. Schneider v. State,* 308 U.

S. 147; *Cantwell v. Connecticut*, 310 U. S. 296, *Prince v. Massachusetts*, 321 U. S. 158. That priority gives these liberties a sanctity and a *sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice.* Compare *United States v. Carolene Products Co.* 304 U. S. 144, 152-153.

"*For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger.* The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. *Only the gravest abuses, endangering paramount interest, give occasion for permissible limitation.* It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly. *It was not by accident or coincidence that the rights to freedom of speech and press were coupled in a single guaranty with the rights of the people peaceably to assembly and to petition for redress of grievances.* All these, though not identical, are inseparable. They are cognate rights, of *DeJonge v. Oregon*, 299 U. S. 353, 364, and therefore are united in the First Article's Assurance. *Cf 1 Annals of Congress* 759-760.

* * * * *

"The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones.

And the rights of free speech and a free press are not confined to any field of human interest."

* * * * *

"That the state has power to regulate labor unions with a view to protecting the public interest is, as the Texas court said, hardly to be doubted. They cannot claim special immunity from regulation. *Such regulation however, whether aimed at fraud or other abuses, must not trespass upon the domains set apart for free speech and free assembly.* This court has recognized that 'in the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within the area of free discussion that is guaranteed by the Constitution . . . . . Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society.' *Thornhill v. Alabama,* 310 U. S. 88, 102-103; *Senn v. Tile Layers Protective Union,* 301 U. S. 468, 478. *The right thus to discuss and inform* people concerning the advantages and disadvantages of unions *and joining them* is protected not only as part of free speech, *but as part of free assembly. Hague v. C. I. O.* 307 U. S. 496. The Texas court in its disposition of the cause, did not give sufficient weight to this consideration, more particularly by its failure to take account of the blanketing effect of the prohibition's present application upon public discussion *and also of the bearing of the clear and present danger test in these circumstances.*"

* * * * *

"As a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with an exercise of the rights of free speech and free assembly. Lawful public assemblies, involving no element of grave

and immediate danger to an interest the State is entitled to protect, are not instruments of harm which require previous identification of the speakers. And the right either of workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others."

* * * * *

"If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order. *So long as no more is involved than exercise of the rights of free speech and free assembly, it is immune to such a restriction.* If one who solicits support for the cause of labor may be required to register as a condition to the exercise of his right to make a public speech, so may he who seeks to rally support for any social, business, religious or political cause. We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment." (Italics ours.)

Thomas v. Collins, Sheriff, 65 S. Ct. 315, 323 U. S. 516; 89 Law Ed. 430; rehearing denied, 65 S. Ct. 557, 323 U. S. 819, 89 Law Ed. 630.

These principles were announced again in a District Court of California, in *U. S. v. Korner, 56 F. Supp. 242.* In that case it was sought to cancel Korner's citizenship which had been acquired by naturalization, on the ground of fraud in his application for citizenship. He had alleged

in his application that he adhered to and believed in the United States Constitution and form of government, while in truth and in fact he belonged at that time to the German-American Bund, and believed in the Hitler System. The court said in denying cancellation of his citizenship:

> "It must be regarded as settled that each liberty specified in the First Amendment of the Constitution is a liberty which is secured by the due process clause of the Fifth Amendment to all persons without regard to citizenship."
>
> * * * * *
>
> "The next proposition is to determine the extent of the liberties of the First Amendment. In that connection it must be regarded as also settled that the liberties of the First Amendment are not absolute liberties, but are subject to a limited restraint. *But such restraint 'is tolerated by our Consttiution only' under what has now come to be known as the 'clear and present danger' rule.*
>
> "The 'clear and present danger' rule is a broad rule, as it necessarily must be. Being broad it cannot and should not be compressed into the narrow confines of a single statement of it or captured in a formula. But the rule has been before the courts often enough that while a standard has not been fixed 'by which to determine when a danger shall be deemed clear; how remote the danger may be and yet be deemed present.' Nevertheless, it has been so variously stated that guides now exist for testing restraints on what is called the 'Minimum compulsion of the Bill of Rights.'
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> In *Bridges v. State of California,* 314 U. S. 252, at page 263, 62 S. Ct. 190, at page 194, 86 L. Ed. 192, the court said:
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> "'What finally emerges from the "clear and present danger" cases is a working principle that the substantive evil must be extremely serious and

the degree of imminence extremely high before utterances can be punished. *Those cases do not purport to mark the furthermost constitutional boundaries of protected expression, nor do we here. They do no more than organize a minimum compulsion of the bill of rights.* For the first Amendment does not speak equivocally. It prohibits any law "abridging the freedom of speech, or of the press. *It must be taken as a command of the broadest scope that explicit language read in the context of a liberty-loving society will allow.*" '

"The fact that the exercise of a liberty of the First Amendment is likely to result in some violence is not enough to justify its suppression. *There must be the probability of serious injury to the state.* Advocacy of ideas or action however reprehensible, is not a justification for denying free speech, where the advocacy falls short of incitement, or where there is no exhortation to immediate violence or to crime or other unlawful means, and there is nothing to indicate that the advocacy must be immediately acted on. *In order to support a finding of clear and present danger it must be shown either that the immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated.* These are some the guides which are set out in the concurring opinion of Justice Brandeis in the Whitney case, *supra,* and now accepted as settled.

"*Freedom of thought, speech, and assembly is the rule; Abridgment of that freedom is the exception.*"

* * * * *

"It is implicit in the Constitution that a Nation which is strong enough to proclaim the individual liberties of the First Amendment is strong enough to apply and enforce and preserve them. The history of this nation is the history of their application and preservation. It has demonstrated that they

are strong enough to endure both war and peace. They not only survived through the various wars of this Nation, but, after the worst kind of all wars where brother is set against brother in a fratricidal civil war, their guarantees were extended as prohibitions against the several states by the due process clause of the Fourteenth Amendment, whereas before, the forbidance was against the National Government only. *During peace times they have survived innumerable ingenious schemes by public bodies and officials, as well as by private organizations, for their restriction or abridgment in zealous efforts to by-pass or ignore them.*

"In its finality, this action seeks to penalize the defendant on the ground the defendant was not 'attached to the principles of the Constitution' because he exercised the rights guaranteed to individuals in the declaration of those principles. In the midst of this war to preserve the liberties set out in those principles, *it would be strange indeed to deny them to a man for their exercise when we were not then at war and under conditions where no clear and present danger is alleged to have existed.*

"Whatever attitude we may individually hold toward persons and organizations that believe in or advocate extensive changes in our existing order, it should be our desire and concern at all times to uphold the right of free discussion and free thinking to which we as a people claim primary attachment. To neglect this duty in a proceeding in which we are called upon to judge whether a particular individual has failed to manifest attachment to the Constitution would be ironical indeed." *Schneiderman v. United States,* 320 U. S. 118, at page 139, 63 S. Ct. 1333, at page 1343, 87 L. Ed. 1796." (Italics ours.)

U. S. v. Korner, 56 Fed. Supp. 242.

See also:

N. L. R. B. v. American Pearl Button Co., 149 Fed. (2) 311.

Douglas v. Jeannette, 63 S. Ct. 877, 319 U. S. 157, rehearing denied, 63 S. Ct. 1170.

Freedom of assembly in the rule. Abridgment of that freedom is the exception. Surely there is nothing in this case which establishes "a clear and present danger" which would operate to remove these police officers and the Fraternal Order of which they are members, from the Constitutionally guaranteed right of freedom of assembly.

(d) Petitioner's property has been taken without due process of law, and their privileges and immunities as citizens of the United States, violated, contrary to the 14th Amendment.

We discuss the application of the equal privileges and immunities clause, and the due process of law clause of the 14th amendment together, largely because the decisions of this court and other courts do so.

It is our position that the equal protection and immunities clause secure to those of the petitioners who are natural persons the right of peaceful assembly as citizens of the United States, and that the due process clause secures them to everybody.

In *Hague v. C.I.O.,* 59 Sup. Ct. 954, 307 U. S. 496, 83 L. Ed. 1423, plaintiffs below, being individuals, and an unincorporated labor union and a corporation, brought injunction proceedings against the officials of the city to restrain them from enforcing an ordinance provided that meetings might not be held without a permit, that none could be held to advocate to overthrow the government. It was complained that plaintiffs had been denied the privilege of meeting on the ground that they were Communists and also destruction of books, pamphlets etc., had been presented and punished. This court in holding

that injunction should be allowed, said in the majority opinion:

> "Although it has been held that the Fourteenth Amendment created no rights in citizens of the United States, but merely secured existing rights against State abridgment, it is clear that the right peaceably to assemble and to discuss these topics, and to communicate respecting them, whether orally or in writing, *is a privilege* inherent in citizenship of the United States which the amendment protects.
>
> "In the Slaughter-House cases it was said, *16 Wall.* 79: 'The right to peaceably assemble and petition for redress of grievances, the privilege of the Writ of Habeas Corpus, are rights of the citizen guaranteed by the Federal Constitution.'
>
> In *United States v. Cruikshank,* 92 U. S. 542, 552-553, the court said:
>
> 'The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or the duties of the national government, is an attribute of national citizenship, and, as such, under the protection of, and guaranteed by, the United States. The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances. If it had been alleged in these counts that the object of the defendants was to prevent a meeting for such a purpose, the case would have been within the statute, and within the scope of the sovereignty of the United States.'
>
> No expression of a contrary view has ever been voiced by this court."

* * * * *

"Citizenship of the United States would be little better than a name if it did not carry with it the right to discuss national legislation and the benefits, advantages and opportunities to accrue to citizens therefrom. All of the respondents' proscribed activities had this single end and aim. The District Court had jurisdiction under Sec. 24 (14).

"Natural persons, and they alone are entitled to the privileges and immunities which Sec. 1 of the Fourteenth Amendment secures for 'citizens of the United States.' Only the individual respondents may, therefore, maintain this suit." (Italics ours.)

Hague v. C.I.O., 59 Sup. Ct. 954, 307 U. S. 496; 83 L. Ed. 1423.

In *DeJonge v. State of Oregon*, 57 S. Ct. 255, 299 U. S. 353, 81 Law Ed. 278, defendant had been convicted in a state court for a criminal syndicalism, which conviction the Supreme Court of that state affirmed. The facts show that he had assisted in the conduct of a meeting under the auspices of the Communist Party, and that this party taught criminal syndicalism contrary to the Oregon Statute. On appeal to this court, the conviction was reversed, the opinion saying:

"Freedom of speech and of the press are fundamental rights which are *safeguarded by the due process clause of the Fourteenth Amendment of the Federal Constitution. Gitlow v. New York, supra,* p. 666; *Stromberg v. California, supra,* p. 368; *Near v. Minnesota,* 283 U. S. 697, 707; *Grosjean v. American Press Co.,* 297 U. S. 233, 243, 244. The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental."

* * * * *

"These rights may be abused by using speech or press or assembly in order to incite to violence and

crime. The people through their legislatures may protect themselves against that abuse. *But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed.* The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the Will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.

"It follows from these considerations that, consistently with the Federal Constitution, peaceable assembly for lawful discussion cannot be made a crime. *The holding of meetings for peaceable political action cannot be proscribed.* Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting in held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of

valid laws. But it is a different matter when the state, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge.

We are not called upon to review the findings of the state court as to the objectives of the Communist Party. *Notwithstanding those objectives, the defendant still enjoyed his personal right of free speech and to take part in a peaceable assembly having a large purpose, although called by that party.* The defendant was none the less entitled to discuss the public issues of the day and thus in a lawful manner, without incitement to violence or crime, to seek redress of alleged grievances. That was of the essence of his guaranteed personal liberty.

We hold that the Oregon statute as applied to the particular charge as defined by the state court is repugnant to the due process clause of the 14th amendment. The judgment of conviction is reversed and the cause is remanded for further proceedings not inconsistent with this opinion." (Italics ours.)

DeJonge v. State of Oregon, 57 S. Ct. 255; 299 U. S. 353; 81 Law Ed. 278.

See also: *Ghadiali v. Delaware State Medical Society*, 28 Fed. Supp. 841.

These decisions clearly establish that the right of assembly is protected by the due process clause, and as to citizens who are natural persons, probably by the equal privileges and immunities clause also, of the 14th amendment.

In the instant case by the acts of the Administrative officers of the city of Detroit, individual petitioners have been deprived of their jobs as police officers, and the Fraternal Order itself of its right to assemble and hold meetings, and all of the petitioners of their right to peaceably

assemble as that term is used in the Constitution. This was done under the cover of a void administrative order 24 years old, and revived at the time of the controversy without any investigation of the circumstances which had changed in a quarter of a century.

It is not our contention that the right to assemble is absolute. But it is our contention that police officers are not excluded from the constitutional protections, and that any such exclusion is the exception and not the rule, and that there is no clear and present danger for which an exception can be based. It is our contention that the 14th Amendment guarantees freedom of assembly to these police officers and to the Fraternal Order of which they are members, unless a clear and present danger is shown. And it is further our contention that no such danger is shown, for the record is conclusive, that Fraternal Order of Police is in no sense inimical to police work, but on the contrary is highly beneficial thereto.

VII.

RELIEF SOUGHT

We respectfully ask that the Writ of Certiorari issue to the Supreme Court of the State of Michigan as prayed in the petition.

Respectfully submitted,

EDWARD N, BARNARD,
Attorney for Petitioners.